

# HOUSE OF LORDS.

Alexander Donaldson, and John Donaldson, - - - *Appellants.*

Thomas Becket, Peter Abraham De Hondt, John Rivington, William Johnson, William Strahan, Thomas Longman, William Richardson, John Richardson, Thomas Lowndes, Thomas Caſſon, George Kearsley, Henry Baldwin, Thomas Cadell, William Owen, and Thomas Davies, *Respondents.*

## THE CASE OF THE RESPONDENTS.

Mr. Thompson was Author of a Poem called *Spring*, and on 16th Jan. 1729, assigns the Copy-right to Andrew Millar.

**J**AMES THOMPSON, late of Richmond, in Surry, Esq; deceased, was, in his Life-time, the Author of a Tragedy called *Sophonissa*, and also of a Poem intitled *Spring*.—In January 1729, Andrew Millar, now deceased, contracted with Mr. Thompson for the Purchase of the said Tragedy and Poem; and, by Indenture, dated the 16th of January, 1729, Mr. Thompson, in Consideration of 137l. 10s. paid to him by the said Andrew Millar, did assign to the said Andrew Millar, his Executors, Administrators, and Assigns, the true Copies of the said Tragedy and Poem, and the sole and exclusive Right and Property of Printing the said Copies, for his and their sole Use and Benefit: And also all Benefit of all Additions, Corrections, and Amendments, which should be afterwards made in the said Copies.

Mr. Thompson was also the Author of several other Poems, particularly three, called *Summer*, *Autumn*, and *Winter*; and an *Hymn on the Succession of the Seasons*; and on 28th July, 1729, assigns the Copies of them to John Millan.

Mr. Thompson was also the Author of the following Poems, viz. a Poem called *Summer*, a Poem called *Autumn*, a Poem called *Winter*, a Poem called *Britannia*, a Poem *Sacred to the Memory of Sir Isaac Newton*, an *Hymn on the Succession of the Seasons*, and an *Essay on Descriptive Poetry*; and, in Consideration of 105l. which, by a Receipt under his Hand, dated 28th of July, 1729, he acknowledged to have received from John Millan, of the Parish of St. Margaret, Westminster, Bookseller, Mr. Thompson sold to the said John Millan the Copies of the several Poems last mentioned, with the sole Right of Printing and Publishing them, together with such Alterations and Additions as the Author should afterwards occasionally make.

15th June, 1738, John Millan assigns the Copies of the Poems, which he had purchased of Mr. Thompson, to Andrew Millar.

About June, 1738, the said Andrew Millar contracted with the said John Millan for the Purchase of the several Poems last mentioned, so sold to him by Mr. Thompson: And, by Indenture, dated 16th June, 1738, John Millan, in Consideration of 105l. paid to him by Andrew Millar, did assign unto the said Andrew Millar, his Executors, Administrators, and Assigns, the several Copies of the Poems last mentioned, with all the Corrections, Alterations, and Additions, which the Author had made, or should make; and all the Right, Title, Interest, Property, Claim, and Demand of the said John Millan to, or in, the said Copies: And also, the several Plates of the Prints of the said *Seasons*, and the Plate of the Print in the Frontispiece of the said *Seasons*: And also, the Plate of the Print of Sir Isaac Newton's Monument: All which Prints had been usually bound up with the said Poems and Pieces.

By Virtue of the aforesaid Indenture, Andrew Millar became lawfully intitled to all the Profits arising by the Printing and Publishing of the several Poems before-mentioned, and to the sole and exclusive Property and Right of Printing Copies of them, and of Vending and Disposing of the same.

In June, 1768, Andrew Millar dies, having, by his Will, appointed his Wife Jane, (now Dame Jane Grant) Will. Millar, Tho. Longman, and Tho. Cadell, his Executors.

Andrew Millar died in June, 1768, having first made his Last Will, in Writing, dated 20th February, 1768; and thereof appointed his then Wife, Jane Millar, (now Dame Jane Grant) William Millar, Thomas Longman, and the Respondent, Thomas Cadell, Executors.

The Testator's Widow, William Millar, and Thomas Cadell, prove the Will.

Soon after Andrew Millar's Death, his Will was duly proved by his Widow, the said William Millar, and the Respondent Thomas Cadell, who thereby became intitled to the several Copies of the Poems before mentioned to have been purchased by the said Andrew Millar, and to the sole Right of Printing, Publishing, and Vending them.

13th June, 1769, the Copy-right of the before mentioned Poems put up to Auction, by Order of Andrew Millar's Executors, and sold in Parts to the Respondents.

On the 13th June, 1769, the Copy-right of the several Poems before mentioned, with the sole Right of Printing, Publishing, and Vending them, was sold, by Order of Andrew Millar's Executors, by Auction, at the Queen's Arms Tavern, in Saint Paul's Church yard, London. At this Sale, the Respondents purchased the Copy-right of the said Poems, in the Proportions, and for the Prices, following, viz. John Rivington purchased One-Fifteenth Part of the said Copy-right for 32l. 12s. William Johnson, another Fifteenth Part for 32l. 12s. William Strahan, another Fifteenth Part for 32l. 12s. Thomas Longman, another Fifteenth Part for 32l. 12s. William Richardson, and John Richardson, Two-Twelfth Parts for 88l. 10s. Thomas Lowndes, One-Twelfth Part for 43l. Thomas Caſſon, One-Twelfth



Twelfth Part for 43l. George Kearsley, One-Twelfth Part for 42l. Henry Baldwin, One-Twelfth Part for 42l. Thomas Cadell, One-Fifteenth Part for 32l. 12s. William Owen, One-Twelfth Part for 41l. 10s. Thomas Davies, One-Twelfth Part for 42l; and Thomas Becket and Peter Abraham De Hondt purchased of the said Thomas Davies One-Twenty-fourth Part for 21l. Afterwards the Respondents respectively paid to the Executors of Andrew Millar the several Sums of Money agreed at the Auction to be given for their several Parts of the Copy-right in the said Poems, and thereby became intitled to the said Copy-right, in the several Proportions before mentioned.

The Appellants, without Consent of the Respondents, publish, and sell, Copies of Mr. Thompson's *Seasons*, and of the *Hymn on the Succession of the Seasons*.

After the Purchase by the Respondents of the *Copy-right* in the said Poems, the Appellants, notwithstanding the sole and exclusive Right which the Respondents claim of Printing, Publishing, and Vending all the said Poems, published and sold several Thousand Copies of the said Poems called *Spring*, *Summer*, *Autumn*, and *Winter*, and the said *Hymn on the Succession of the Seasons*, in a Volume intitled, *The Seasons*, by James Thompson; Edinburgh, printed by A. Donaldson, 1768; and thereby acquired considerable Profits, to the great Loss and Prejudice of the Respondents.

21st January, 1771, Respondents filed a Bill in Chancery against the Appellants, for an Account of the Copies sold, and to restrain them from selling any Copies in future.

Upon this, the Respondents applied to the Appellants to stop the Sale of the Poems and Hymn, so published and sold without the Consent of the Respondents, and for an Account of the Number of Copies sold, and of the Monies which had been received for them. But the Appellants refusing either to stop the Sale, or to Account; the Respondents, on the 21st of January, 1771, filed a Bill in Chancery against the Appellants; thereby stating the several Facts before mentioned, and praying that the Appellants might answer the Premises, and come to an Account with the Respondents for the Money which the Appellants had received by the Sale of the said Poems and Hymn; and that the Appellants might for ever after be restrained by the Injunction of the Court from publishing the said Poems and Hymn, and from selling any Copies of them in future, and for general Relief.

Answers of the Appellants: Sworn 16th and 20th July, 1771.

The Appellants, in their Answers, insist, That the several Terms of Fourteen Years, and Fourteen Years, given by the 8th Ann, Chap. 18, having expired in 1757, as to the Poems in question, the Appellants had a Right to print, publish, and sell Copies of them, without Consent of the Respondents.

On the 16th and 20th July, 1771, the Appellants put in their Answers, and thereby admit, That Mr. Thompson was the Author of the several Poems mentioned in the Bill, but deny all Knowledge of the several Assignments, which the Bill states, of the Copies of the said Poems; and say, that they believe that Mr. Andrew Millar, by Virtue of the several Indentures mentioned in the Bill, or by any other Means, did not become intitled to the Copy-right in the Poems before mentioned, for a longer Time than the several Terms limited by an Act passed in the Eighth Year of her late Majesty Queen Ann, intitled, *An Act for the Encouragement of Learning, by vesting the Copies of printed Books in the Authors, or Purchasers of such Copies, during the Times therein mentioned*. The Clauses relied upon in the Answer of the Appellants are; That by which it is enacted, *That the Author of any Book, or Books, then already composed, and not printed or published, or that should thereafter be composed, and his Assignee, or Assigns, should have the sole Liberty of Printing and Re-printing such Book, and Books, for the Term of Fourteen Years, to commence from the Day of first publishing the same, and no longer; and a Proviso, by which it is further enacted, That after the Expiration of the said Term of Fourteen Years, the sole Right of Printing and Disposing of Copies shall return to the Authors thereof, if they are then living, for another Term of Fourteen Years*. The Appellants, in their Answers, also say, That the Copies of the several Works, in the Bill mentioned to have been written by Mr. Thompson, having, as appears by the Bill, been assigned by him, and first published, in 1729; the sole Right of Printing, Publishing, and Selling the same could not be extended beyond the Term of Twenty-eight Years, from the Time of such first Publication, which Term expired in 1757; and deny, that during the said Term they were concerned in the Printing, Publishing, or Selling any Copies of the said Works. They admit the Death of Andrew Millar; and that, before his Death, he made his last Will, and appointed such Persons Executors, as in the Bill are named; and that it was proved in Manner therein mentioned. But they insist, for the Reasons aforesaid, that the Executors of Andrew Millar did not, by his Will, or otherwise, become intitled to the sole Right of Printing and Publishing the said Poems. The Appellants admit in their Answers, that they have, since the Expiration of the said Term of Twenty-eight Years, without the Consent of the Respondents, printed, published, and sold several Copies of the Poems in the Bill mentioned; and insist, that unless the Respondents are able to make out a Title to the sole and exclusive Property of the said Poems, paramount the aforesaid Act of Parliament, the Appellants are, by Virtue of that Act, well authorized in Printing, Publishing, and Selling the said Poems, and are not compellable to account for, or discover the Number of Copies they had printed, published, or sold, and ought not to be restrained from the further Publication and Sale of the same; and, therefore, claim the Benefit of the said Act of Parliament, as if they had pleaded the same in Bar to the Relief and Discovery sought by the Bill.

17th Nov. 1771, the Respondents amend their Bill by making the Respondent, Thomas Cadell, a Party.

On the 17th November, 1771, the Respondents obtained an Order for leave to amend their Bill; and it was amended accordingly, by making the Respondent, Thomas Cadell, whose Name was before omitted, a Party.

Afterwards, the Respondents replied to the Answer of the Appellants; and they rejoined: And then the Cause being at Issue, two Witnesses were examined by the Respondents to prove Mr. Thompson the Author of the before-mentioned Poems, and the several Assignments of the *Copy-Right* in them to Andrew Millar, and the Sale, by his Executors, to the Respondents.

16th Nov. 1772, the Lord Chancellor's Decree for the Respondents.

On the 16th November, 1772, the Cause was heard before the Right Honourable the Lord Chancellor, when his Lordship was pleased to decree, That the Injunction, which had been before granted in the Cause, should be made Perpetual; and that it should be referred to the Master to take an Account of what had been received by the Appellants, or either of them, or by any other Person by their Order, or for their Use, from the Publishing and Sale of the Poems in the Pleadings mentioned, and that the Appellants should pay unto the Respondents what should be found due to them on the Balance of the said Account; and his Lordship reserved the Consideration of Costs until the Master should have made his Report; and any of the Parties were to be at Liberty to apply to the Court as there should be Occasion.

From



From this Decree the Appellants have brought their Petition and Appeal, praying that it may be reversed. But the Respondents are advised, and humbly beg leave to contend, that the Decree of the said Chancellor is just and equitable; and ought to be affirmed; and that the Petition and Appeal ought to be dismissed with Costs, for the following (amongst other)

## R E A S O N S.

I. The Claim of Authors to the sole and exclusive Right of Printing and Publishing their own Works, is founded upon Principles of Reason and Natural Justice. It is just and equitable, that those, who labour in the Advancement of Knowledge, and communicate their Ideas in written Compositions to the Public, should have a Recompence; and in order to obtain a suitable one, Authors, when they publish their Works, mean to reserve to themselves the Right of multiplying printed Copies; and the Nature of Printing, and the Circumstances attending a Publication, being considered, there is an implied Agreement, on the Sale of each particular Copy, that the Purchaser shall not invade the beneficial Right of multiplying Copies intended to be reserved by the Author.

II. From the first Introduction of the Art of Printing into England, this peculiar Species of Property has been known by the expressive Name of *Copy-right*; has continually been the Subject of Sale, Gift, and Family-Settlement; has always been protected from Invasion; and, in some Instances, has even been recognized by the Legislature.

III. It is a Point too well established to be denied, that at *Common Law*, the sole and exclusive Right of multiplying for Sale the Copies of Acts of Parliament, Proclamations, and other Papers of a public Nature, belongs to the King, and his Patentees; not in consequence of any Prerogative over the Art of Printing, but on account of his peculiar Interest, as the executive Power, in all Publications and Acts of State flowing from himself, or Parliament. This shews, that an Interest or Property similar to that claimed by Authors, may subsist at *Common Law*; and though the Reasons, on which Authors claim an Interest in their own private Copies, are not precisely the same as those from which the Interest of the Crown in Public Copies is derived, yet they are not less forcible; but give to Authors a Title of Property, as well founded in Justice, as the Title of the Crown is founded in Policy, and one equally consistent with Public Utility.

There is nothing in the Statute of Queen Ann to take away that Interest or Property, to which Authors were before intitled in the Publication and Sale of their own Works. The Object of that Statute was to secure Literary Property by Penalties from Piracy and Invasion; and though the Protection given is only temporary, yet, so far from being made so under an Idea of the Legislature, that Authors had no Property in their Works before, or with an Intention to limit its Duration, the Statute expressly declares, that nothing contained in it shall prejudice or confirm any Right which the Universities, or any Person or Persons, might claim to the Printing or Re-printing of any Book or Copy then printed, or afterwards to be printed.

Since the Statute of Queen Ann; many Injunctions have been granted by the Court of Chancery to restrain the Invasion of *Copy-right*, notwithstanding the Expiration of the Term during which only the Statute gives a Protection by Penalties; and the Opinion of the Chancellors, who granted such Injunctions, has been confirmed by a Judgment of the Court of King's Bench in Favour of Literary Property, which was given after solemn Argument.

Upon the Faith of the Protection, which has hitherto been given to Literary Property independantly of the Statute of Queen Ann, great Sums of Money have been expended in purchasing Copies, and in the Printing and Manufacturing of Books from such Copies, vast Stocks of which Books, from the unalterable Nature of Printing, are unavoidably in hand; and if such Protection should be now withdrawn, many Families will lose their whole Estates, and necessarily be involved in Ruin.

AL. WEDDERBURN.

J. DUNNING.

FRA<sup>s</sup>. HARGRAVE.

Die Martis 22<sup>o</sup> Februij 1774

After being fully heard in this cause — the following Questions were  
put to the Judges.

Whether at Common Law an Author of any Book or literary  
Composition had the sole Right of first printing and publishing the same  
for Sale and might bring an Action ag<sup>t</sup> any Person who printed  
published



published and sold the same without his consent.

If the Author had such Right Originally, did the Law take it away upon his printing and publishing such Book or literary Composition and might any Person afterward reprint and sell for his own Benefit such Book or literary Composition ag<sup>t</sup> the Will of the Author.

If such Action would have lain at Common Law, is it taken away by the Statute O: Anne and is an Author by the Statute precluded from every Remedy except on the Foundation of the said Statute and on the Terms and Conditions prescribed thereby?

Whether the Author of any literary Composition and his Assigns had the sole Right of printing & publishing the same in Perpetuity by the Common Law?

Whether this Right is any way impeach'd restrain'd or taken away by the Statute O: Anne?

And the Judges differing in Opinion upon the said Questions they were heard Seriatim and gave their Reasons—Then after Consideration had of what was offered

Order'd and Adjudg'd That the said Decree Complain'd of be Revers'd, the Respond<sup>t</sup>'s Bill Dismiss'd without Costs.

As 6 of the Judges were ag<sup>t</sup> the Perpetuity & 5 for it.

#### HOUSE OF LORDS.

Alexander Donaldson, and John Donaldson, - Appellants.

Thomas Becket, Peter Abraham De  
Hondt, John Rivington, William  
Johnston, William Strahan, Thomas  
Longman, William Richardson, John  
Richardson, Thomas Lowndes, Tho-  
mas Cadell, George Kearsley, Henry  
Baldwin, Thomas Cadell, William  
Owen, Thomas Davies, } Respondents.

#### THE CASE OF THE RESPONDENTS.

To be heard at the Bar of the House of Lords on Friday the  
4th Day of February, 1774.





# The MODE and MANNER of PRINTING BOOKS.

**P**rinting of Books is of a peculiar Nature, and the Manufacture of them totally *different from that of mechanical Instruments*; and, being not commonly understood, it may not be improper at present to describe and consider it.

PRINTING is performed by moveable Types made of hard Metal, each of which is a separate Body, of a thin oblong Size, one End whereof represents a single Letter of the Alphabet. These Types are picked up one by one; and by being set up Side by Side on the narrow End, with the Face of the Letter upwards, are formed into Words, and Lines, and Pages, and Sheets.

As soon as there are enough collected thus to compose one Sheet, they are tied together in an Iron Frame; and being drawn under the Press, *so many* of the said Sheet are stamped off *as there are Books* to be printed. One Side of the Sheet is first stamped or printed with the Pages proper to it; and, when the whole Number is done, the other Side of the Sheet is printed with the Pages proper to that.

ONE Sheet being thus finished, the Types or Letters thereof are distributed into Alphabet; and then picked up again one by one, as before, to compose and print the next Sheet. Thus it proceeds, distributing and picking up, Sheet after Sheet, till the whole Work is finished.—And if there be an hundred and fifty Sheets in a Book, there *cannot be one* perfect Book, till the *last Sheet* is printed.

Hence it appears, that Books cannot be made *one by one* like mechanical Instruments; and that when a Man *prints or reprints* the *first* Sheet (or indeed the first half Sheet) of a Book, he involves himself in the *Expence* of the *whole Number of Books* to be printed, which is called an Impression, and commonly consists of 1000 Copies or upwards.—This discharges every Idea of an *undue and hurtfull Monopoly* in Bookselling, and shews likewise, that an exclusive Right in Copies is useful for the Maintenance of printing and reprinting Books: When a Man is at the Expence of making an *Impression* of Books, he must expect to receive from it again his *Principal Money* and *Interest*, with some *Profit* for his Labour and Hazard, if the Market will produce it. But Profit will not arise, except from the Sale of the *last Part* of the Impression. *This Benefit* is rarely obtained from reprinted Books under several Years; and as Books are not the Necessaries of Life, and every Reader is contented with one of a Sort, is *always uncertain* in respect to the Time in which it will happen, and whether it will happen or no.

**P**rinting of Books is of a peculiar Nature, and the Ma-  
nufacture of them totally different from that of mechanical In-  
struments, and being not commonly understood, it may not be im-  
proper to present to the Reader a brief and concise  
Description of the several Parts of the Art, and the Manner in which  
they are performed. The first Part of the Art is the Casting of the  
Types, which is a separate Trade, of a thin oblong Size, one End  
whereof is tapered to a single Letter of the Alphabet. These Types  
are picked up one by one, and by being set up side by side on the  
narrow End, with the Face of the Letter upwards, are formed into  
Words, and Lines, and Pages, and Sheets.  
As soon as there are enough collected thus to compose one Sheet,  
they are tied together in an Iron Frame, and being drawn under the  
Press, a Way of the said Sheet is flung off, so that the Types are  
be printed. One Side of the Sheet is left blank, or printed with  
the Pages proper to it; and, when the whole Number is done, the  
other Side of the Sheet is printed with the Pages proper to that.  
One Sheet being thus finished, the Type or Letter is set out, and  
distributed into Alphabet; and then picked up again one by one,  
as before, to compose and print the next Sheet. Thus is continued  
distributing and picking up, Sheet after Sheet, till the whole Work is  
finished. And it is to be observed, that the Sheets in a Book  
there cannot be any great Book.  
Hence it appears, that Book Binding is a Trade, and not a  
mechanical Instrument; and that the Man who binds a Book, or  
the Sheet for it, is not the same as the Man who casts the Types,  
or the Printer of the Book. The Man who binds a Book, or the  
Sheet for it, is called a Book Binder, and is commonly considered as  
of a different Trade from the Printer. The Man who casts the Types,  
or the Printer, is called a Typesetter, and is commonly considered as  
of a different Trade from the Book Binder. The Man who binds a  
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considered as of a different Trade from the Printer. The Man who  
casts the Types, or the Printer, is called a Typesetter, and is  
commonly considered as of a different Trade from the Book Binder.  
When a Man is at the Expense of making a Book, or the Sheet  
for it, he must expect to receive from it again his former Labour, and  
travels, with some Profit for his Labour and Travels. If the Book  
will produce it, the Profit will not only cover the Cost, but will  
the last Part of the Impression. The Book is then ready for  
reprinting, and the Printer is ready to set it up again, and print  
another Edition of it, and every Reader is contented with the  
Edition, because it is the same as the first, and will produce  
what it will support or no.

